

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. L-11/09-585
)
 Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families, Health Access Eligibility Unit (HEAU) finding her son ineligible for Disabled Children's Home Care (DCHC or "Katie Beckett") benefits under Medicaid. The issues are whether the petitioner's son meets the Medicaid childhood definition of disability and, if so, whether he meets the additional medical eligibility requirements of the Katie Beckett program.

DISCUSSION

The petitioner's son is fifteen years old with a history of socially inappropriate behavior. His diagnoses include Tourettes disorder, obsessive compulsive disorder, ADHD, and attachment disorder. The extensive medical record includes several behavioral and psychiatric evaluations, as well as school records, assessments, and behavioral plans. He currently lives at home and attends school and is fairly successful academically. However, his social behaviors

appear to be worsening, and he is becoming more unmanageable at home. The DCHC or Katie Beckett program provides more liberal *financial* eligibility criteria for Medicaid benefits to certain children with extraordinary medical needs.

However, before determining whether a child is eligible for Katie Beckett, the Department *first* determines whether the child meets the federal Social Security/SSI definition of disability for children under eighteen. See W.A.M. § 4202.2.

In this case the Department has determined that the petitioner's son does not meet federal SSI criteria for having "marked" or "extreme" symptoms and behaviors resulting from his diagnosed disorders. 20 C.F.R. § 416.924(a). For mental impairments, the federal regulations discuss six areas or "domains" in which severe functional limitations must be present: acquiring and using information, attending and completing tasks, interacting and relating with others, moving about and manipulating objects, self care, and health and physical well-being. Based on the medical evidence submitted the Department determined that the petitioner's son shows "marked" limitations only in the area of "attending and

completing tasks", which is insufficient under the regulations to support a determination of disability.¹

At the hearings in this matter, held by phone on December 3, 2009 and January 2, 2010, the hearing officer informed the petitioner that even if she could submit additional medical evidence that would overcome the Department's decision regarding Medicaid disability (e.g., it may well be arguable that her son also has "marked" limitations in the domain of "interacting and relating with others") there appeared to be little, if any, indication in the record that her son could medically qualify for Katie Beckett. Inasmuch as the petitioner's son is under eighteen, he already *categorically* qualifies for Medicaid on this basis alone, *regardless of disability*. The problem, however, is that the petitioner's family is well over income for her son to *financially* qualify for Medicaid. For this reason, the Board must more fully analyze the medical evidence in light of his eligibility for Katie Beckett, because unless it could be determined that the petitioner's son would *ultimately* qualify for Katie Beckett, further pursuit of disability-based Medicaid, in and of itself, is pointless.

¹ The regulations (see *supra*) require a finding of "marked" limitations in at least two domains or "extreme" limitations in one domain.

To qualify for the Katie Beckett program it must be shown that a child requires a continuing level of medical and/or personal care that is typically provided by a "medical institution", i.e. hospital, nursing home, or intermediate care facility for the mentally retarded (ICF-MR), and that such care can be provided in the child's home at no greater cost than in an appropriate institution. See W.A.M. § 4202.3(E). The stated goal of the program is to encourage and support families to provide home-based care for children *who would otherwise be in an institution*. Obviously, only the most profoundly disabled children qualify for this program.

In this case there is no evidence, much less even a suggestion, that institutional care would be, or is foreseeably likely to be, necessary or appropriate for the petitioner's son on an ongoing basis. At the hearings, the hearing officer advised the petitioner that she and her son might well have rights under special education law to the extent that her son may need more extensive services, supports, or accommodations in order to receive a free and appropriate education. However, based on the diagnoses and recommendations of his educational and medical providers, it does not appear that the petitioner's son comes anywhere near

the criteria for qualifying for Katie Beckett at this time, even if he were found to meet the Medicaid criteria of disability.

ORDER

Based on the foregoing, the Department's decision must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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